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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,020	09/12/2003	Ruth L. Levy	K1084/20040	6816

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EXAMINER

VANIK, DAVID L

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/661,020

Applicant(s)

LEVY ET AL.

Examiner

David L. Vanik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-55 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

Receipt is acknowledged of the applicant's Oath or Declaration filed on 1/16/2004.

Receipt is also acknowledged of the applicant's Information Disclosure Statement and Change of Address forms, filed on 3/10/2005 and 12/27/2004, respectively.

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, 14-32, and 38-47, drawn to a composition comprising a surface, an anionic surfactant, and a polymeric biguanide non-covalently bound to said anionic surfactant, classified in class 424, subclass 70.22.
  - II. Claims 9-13 and 33-37, drawn to a method of making a biguanide-based composition, classified in class 424, subclass 404.
  - III. Claims 48-51, drawn to an absorbent article, classified in class <sup>424</sup>~~514~~, subclass <sup>402</sup>~~865~~.
  - IV. Claims 52-55, drawn to an absorbent article comprising a topsheet, an intermediate layer, a backsheet, and an absorbent layer further comprising polymeric biguanide, classified in class 424, subclass 78.12.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I, III and IV and Invention II are related as process of making and product made. The inventions are distinct if either or both of the following can be

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shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the composition as claimed can be prepared by adding an anionic polymer to non-woven fibres containing a mixture of polymeric biguanide.

3. Inventions I and Inventions III and IV are unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Invention I is drawn to a composition comprising a surface, an anionic surfactant, and a polymeric biguanide non-covalently bound to said anionic surfactant, whereas Inventions III and IV are drawn to absorbent articles. As distinct compositions, Inventions I and Inventions III and IV have different functions and effects. A reference anticipating one group of inventions would not necessarily render the other inventions obvious.

4. Inventions III and IV are unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Invention III is drawn to an absorbent article containing a topsheet, whereas Invention IV is drawn to an absorbent article comprising a topsheet, an intermediate layer, and a backsheet. The scopes of Invention III and IV

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are significantly different. As a result, the compositions are expected to have different functions, modes of operation, and effects. A reference anticipating one group of inventions would not necessarily render the other inventions obvious.

5. Searching the inventions of Groups I – IV together would impose a search burden on the examiner. In the instant case, the search of distinct compositions and a method of making said compositions would impose a search burden on the examiner.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. Because these inventions are distinct for the reasons given above and the search required for each subset of Groups I – IV are not required for one another, restriction for examination purposes as indicated is proper.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

10. **In the event that applicant elects Group I, the following election of species is required.** This application contains claims directed to the following patentably distinct species of fibers (claims 21 and 45):

- (a) spunbond,
- (b) thermally bonded,
- (c) ultrasonically bonded,
- (d) adhesively bonded,
- (e) hydroentangling.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 18 and 42 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

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all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

**11. In the event that applicant elects Groups I, III, or IV the following election of species is required.** This application contains claims directed to the following patentably distinct species of absorbent articles (claims 24, 47, 49, 53, 55):

- (a) disposable diaper
- (b) disposable incontinence pad
- (c) disposable feminine hygiene pad

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 23, 46, 48, 52, and 54 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

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is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

**12. In the event that applicant elects Group II, the following election of species is required.** This application contains claims directed to the following patentably distinct species of surface application (claims 10, 13, 34, and 37):

- (a) "Kiss-on" roller
- (b) brush roller
- (c) spray
- (d) foam



Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 9 and 33 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

13. Due to the complexity of the action, examiner submitted the Election Restriction in writing in lieu of calling applicant's attorney.

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### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik, Ph.D.  
Art Unit 1615

  
3/23/05

  
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